

d.) **Remarks.**

Claim 1 has been amended to clarify the comparison of weight ratios between unextracted plant materials and extracted compositions. Applicant has canceled claims 11-14, which were previously withdrawn with traverse in response to a restriction requirement. Claims 15-23 have been added. Support for these new claims can be found in paragraphs [0012]-[0018]. No new matter or new issues are raised with these amendments, and their entry is respectfully requested. Claims 1-10 and 15-23 are pending.

Remarks Regarding 35 U.S.C. § 112, Second Paragraph

Claims 1-10 stand rejected, under 35 U.S.C. § 112, second as allegedly indefinite. Applicant respectfully traverses this rejection.

With regard to claim 1, the Examiner alleges that “[i]t is not clear...what is meant by ‘within 100%.’” Applicant respectfully directs the Examiner to paragraph [0037] of the specification, where it is explained that the ratios of phytochemicals in the extracts are within 300%, 200%, 100%, 50% or 25% of the ratios of phytochemicals in the plant material. This is believed to have been further clarified by the amendment to claim 1, which now recites that “wherein the relative weight ratios of substances present in the extracted soluble composition within each selected class are within 100% of the respective ratios for substances in the unextracted plant material.”

With regard to claim 7, the Examiner alleges that the word “mimic” is unclear. Applicant respectfully directs the Examiner’s attention to paragraph [0037] of the specification, where the term “mimic” has been defined. The specification states that “[t]he term ‘mimic’ in this context means that the ratios of the phytochemicals in each group (conveniently measured on a weight basis in the dry form) are within 300%, 200%, 100%, 50% and more preferably within 25% of each other.” According to MPEP 2111(IV),

“An Applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s). See In re Paulsen, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) (inventor may define specific terms used to describe invention, but must do so “with reasonable clarity, deliberateness, and precision” and, if done, must “set out his uncommon definition in some manner within the patent disclosure” so as to give one of ordinary skill in the art notice of the change” in

meaning) (quoting Intellicall, Inc. v. Phonometrics, Inc., 952 F.2d 1384, 1387-88, 21 USPQ2d 1383, 1386 (Fed. Cir. 1992))."

A definition for the term "mimic" has been clearly set out, and one of ordinary skill has been given unambiguous notice of this definition by use of quotation marks around the term and by use of language indicating that a definition has been provided (the sentence in the specification begins with the phrase "[t]he term 'mimic' in this context means" [emphasis added]). Therefore, this rejection is believed to be in error because the term in claim 7 has been defined by Applicant.

Thus, this rejection is moot or has been overcome, and Applicant respectfully requests that it be withdrawn.

Remarks Regarding 35 U.S.C. § 103(a)

Claims 1-10 stand rejected, under 35 U.S.C. § 103(a), as allegedly obvious over Walker. Applicant respectfully traverses this rejection and all comments made in the Office Action.

To establish a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; there must be a reasonable expectation of success; and the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991), cited in MPEP 2142.

Walker simply reflects the known prior art extensively discussed by the present application in the "Description of the Background" section of the specification. For example, paragraph [0004] discusses precisely the parameters found in Walker, and distinguishes them from the inventive subject matter in the specification:

Methods for extracting these bioactive compounds generally favor one type of bioactive molecule over another. This unfortunately diminishes the value or raises the cost of the product supplied to the consumer. Many methods in the literature for isolating bioactive molecules or groups of molecules originated from basic research on small samples and are not practical for commercial use. [0004]

Walker employs precisely the type of methodology from which Applicant distinguishes itself, as Walker is directed to cranberry extracts containing optimized anti-adhesion properties (column 1, lines 29-31). The claimed invention, in extreme contrast, is directed to solutions containing “multiple substances within at least 3 classes” (claim 1). The substances present in the claimed invention include carotenoids, anthocyanins, fatty acids, terpenes, and alkaloids, thus reaching far beyond Walker’s disclosed enriched anti-adhesion activity, flavonoids and cursory mention of “other polyphenol compounds.”

The Examiner alleges on the top of page 5 of the Office Action that “Applicants have not established what weight ratios [in the plant material] are.” This is simply irrelevant because the claimed invention is directed at mimicking the weight ratios in the unextracted plant material (see claim 7), or obtaining ratios that are within 100% of the ratios in the unextracted plant material (see claim 1). As has previously been explained, the term “mimic” is defined in paragraph [0037] of the specification using a range of expressed ratios. Walker neither discloses nor suggests such high extraction efficiency as does the claimed invention. Moreover, Walker neither discloses nor suggests such low percentages of sugar content in the presence of such high yields of substances.

For at least these reasons, there is no suggestion or motivation to employ any part of Walker’s isolative methods to attain the claimed invention. Moreover, Walker does not disclose the claimed invention. Accordingly, for at least these reasons, the rejection of claims 1-10, under 35 U.S.C. § 103 (a), is moot or overcome and Applicant respectfully requests that it be withdrawn.

Conclusion

In view of the foregoing amendments and/or remarks, reconsideration of the application and issuance of a Notice of Allowance is respectfully requested.

If there are any issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned at the number below.

Should additional fees be necessary in connection with the filing of this Responsive Amendment, the Commissioner is hereby authorized to charge **Deposit Account No. 14-1437 for any such fees, referencing Attorney Docket No. 8129.004.US**; and Applicant hereby petitions for any needed extension of time not otherwise accounted for with this submission.

Respectfully submitted,
Novak Druce & Quigg LLP

By 

James Renwick
Registration No. 36,902

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Customer No. 69911
Novak Druce & Quigg LLP
1000 West Tower
1300 Eye Street, NW
Washington, DC 20005
(202) 659-0100 (telephone)
(202) 659-0105 (facsimile)